

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:CORP:03  
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Date:  
October 24, 2012

Legend

Taxpayer =

Operating Partnership =

Exchange =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

Year 2 =

Dear :

This letter responds to your letter dated March 30, 2012, submitted on behalf of Taxpayer, requesting rulings under Internal Revenue Code sections 301, 305 and 562(c) (Ruling Request).

The rulings contained in this letter are based upon facts and representations that were

submitted on behalf of Taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This Office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

## SUMMARY OF FACTS

Taxpayer is an accrual basis taxpayer that files its Federal income tax returns as a real estate investment trust (REIT) on a calendar year basis. Substantially all of Taxpayer's business activity is conducted through Operating Partnership. Taxpayer represents that it qualifies as a REIT under the Code. Taxpayer regularly distributes at least 100% of its taxable income for each taxable year in order to comply with section 857(a)(1).

Taxpayer has one class of common stock outstanding (the Common Stock), the shares of which are publicly traded on the Exchange. All references to "stockholder" herein refer to holders of Common Stock.

Taxpayer currently intends to sell a number of its properties in Year 1 and Year 2, and expects to recognize taxable gain. In order to eliminate the taxable income under section 857 for each respective taxable year, and to continue to qualify as a REIT for each taxable year, Taxpayer intends to make a dividend distribution to its stockholders (the Special Dividend).

The Year 1 Special Dividend will be declared by the Board of Directors on or before Date 1, with respect to the taxable year ending on Date 1, and will be paid to Taxpayer's stockholders on or before Date 2. The Special Dividend will be declared in October, November, or December of Year 1 and will be payable to Taxpayer's stockholders of record on a specified date in such month.

The Year 2 Special Dividend will be declared by the Board of Directors on or before Date 3, with respect to the taxable year ending on Date 3, and will be paid to Taxpayer's stockholders on or before Date 4. The Special Dividend will be declared in October, November, or December of Year 2 and will be payable to Taxpayer's stockholders of record on a specified date in such month.

Each stockholder may elect to receive the entire dividend to which the stockholder is entitled under the declaration in either all cash (Cash Option), all Common Stock of equivalent value (Stock Option) or a combination of 20% cash and 80% Common Stock (Mixed Option), subject to a limitation on the amount of cash to be distributed in the aggregate to all Common Stock shareholders (Cash Limitation).

The Cash Limitation will not be less than 20% of the aggregate declared distribution under the Special Dividend. The Board of Directors may determine to increase the total amount of cash payable under either Special Dividend, in which case the Cash

Limitation will be increased appropriately. In such event, all references below to a 20 percent cash limit, including the Mixed Option, as defined below, will refer to the greater cash limit.

If the total number of shares of Common Stock with respect to which the Cash Option election or the Mixed Option election is made would result in the payment of cash in an aggregate amount that is less than or equal to the Cash Limitation, then all holders of such shares will receive cash equal to the amount elected; the stockholders who elect the Cash Option will receive the Special Dividend entirely in cash, and stockholders who elect the Mixed Option will receive the Special Dividend in 20% cash and 80% Common Stock.

If the total number of shares of Common Stock with respect to which the Cash Option election or the Mixed Option election is made would result in the payment of cash in an aggregate amount that is more than the Cash Limitation, then (i) stockholders electing to receive the Mixed Option will receive 20% of the Special Dividend in cash, with the remainder being received in shares of Common Stock, and (ii) stockholders electing to receive the Cash Option will receive a prorated portion of the remaining available cash (i.e., the Cash Limitation minus the aggregate amount of cash payable to stockholders electing the Mixed Option), with the remainder being received in shares of Common Stock. Taxpayer represents that in no case will a stockholder electing to receive cash, whether under the Cash Option or the Mixed Option, receive less than 20% of the stockholder's portion of the Special Dividend in cash.

Any stockholder who does not elect to receive either cash or stock will be deemed to have elected to receive his or her entire dividend in Common Stock.

Taxpayer will provide its stockholders with election forms shortly after the record date for each Special Dividend. Each election form will set forth the amount of the Special Dividend, including a description of the Cash Limitation. Each stockholder may elect by the election deadline the Cash Option, the Stock Option, or the Mixed Option. To the extent necessary, Taxpayer will issue cash in lieu of fractional shares of Common Stock (which will not count toward the Cash Limitation).

Taxpayer represents that the calculation of the number of shares to be received by any stockholder will be determined, over a period of up to two weeks ending as close as practicable to the payment date of each Special Dividend, based upon a formula utilizing market prices that is designed to equate in value the number of shares to be received with the amount of money that could be received instead.

With respect to any stockholder participating in Taxpayer's Dividend Reinvestment and Stock Purchase Plan (DRIP), the DRIP will apply only to the extent that, in the absence of the DRIP, the participating stockholder in each Special Dividend would have received the distribution of cash under the Special Dividend.

## RULINGS

Based solely on the information submitted and the representations made, we rule as follows:

- (1) All of the cash and shares of Common Stock distributed by Taxpayer in the Special Dividends will be treated as a distribution of property by Taxpayer with respect to its stock to which section 301 applies by reason of section 305(b).
- (2) The amount of the distribution of Common Stock received by any stockholder in the Special Dividends will be considered to equal the amount of the money which could have been received instead. Section 301(b)(1); Treas. Reg. 1.305-1(b)(2); and 1.305-2(b), Example 2.
- (3) The terms of the Special Dividends will not cause the Special Dividends to be considered preferential under section 562(c) of the Code. Accordingly, if, under those terms, a stockholder receives a combination of Common Stock and money that differs from the combination received by another stockholder and if the fair market value of the Common Stock on the date of distribution differs from the amount of money which could have been received instead, those differences will not cause the distribution to be considered preferential under section 562(c).

## CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether Taxpayer qualifies as a REIT under subchapter M of the Code.

## PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Pursuant to the power of attorney on file in this office, a copy of this letter will be sent to your authorized representative.

Sincerely,

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Mary E. Goode  
Senior Counsel, Branch 6  
Office of Associate Chief Counsel (Corporate)

cc: